

**NEVADA DEPARTMENT OF  
CONSERVATION & NATURAL RESOURCES**

**STATE ENVIRONMENTAL COMMISSION**

**HEARING ARCHIVES FOR**

**REGULATORY PETITIONS**

**COMMISSION PETITION NO. 98002**

**LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-035-98**

**DOCUMENTS INCLUDED IN THIS FILE:**

**SECRETARY OF STATE FILING FORM**

**DISCLOSURE STATEMENT PURSUANT TO NRS 233B**

**REGULATORY PETITIONS**

**YES**

**ORIGINAL DRAFTED BY COMMISSION**

**ADOPTED BY COMMISSION**

**AS FILED AND CODIFIED BY LCB**

**PROPOSED PERMANENT REGULATION OF THE  
NEVADA STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R035-98**

Explanation: Matter in *italics* is new. Matter in [ ] is material to be omitted.

AUTHORITY: §§ 1 to 21, NRS 444.560

**Section 1.** Chapter 444 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 16, inclusive, of this regulation.

**Sec. 2.** *As used in NAC 444.685 to 444.6859, inclusive, and sections 2 to 16, inclusive of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *"Local government" means any political subdivision of this state that is a legally separate and fiscally independent entity and has a clear responsibility for meeting its own financial needs.*

**Sec. 4.** *"Corporate owner or operator" means any private owner or operator, including, without limitation, a corporation, limited-liability company, partnership or sole proprietorship.*

**Sec. 5.** *A local government that is an owner or operator may, if it satisfies the requirements of sections 6 to 9, inclusive, of this regulation, demonstrate financial assurance up to the amount set forth in section 10 of this regulation.*

**Sec. 6.** *1. To demonstrate financial assurance pursuant to section 5 of this regulation, a local government that is an owner or operator:*

*(a) If the local government that is an owner or operator has any outstanding, rated general obligation bonds which are not secured by insurance, a letter of credit or other collateral or guarantee, must have a current rating of Aaa, Aa, A or Baa from Moody's Investor Services, Inc., or AAA, AA, A or BBB from Standard and Poor's ratings Services on all such general obligation bonds; or*

*(b) Must have, based on the most recently audited annual financial statement of the local government that is an owner or operator:*

*(1) A ratio of cash plus marketable securities to total annual expenditures not less than 0.05; and*

*(2) A ratio of annual debt service to total annual expenditures not greater than 0.20.*

*2. To demonstrate financial assurance pursuant to section 5 of this regulation, a local government that is an owner or operator must:*

*(a) Prepare its financial statements in conformity with generally accepted accounting principles for government agencies; and*

*(b) Use an independent certified public accountant or an appropriate state agency whenever the local government has its financial statements audited.*

*3. A local government that is an owner or operator is not eligible to demonstrate financial assurance pursuant to section 5 of this regulation if the owner or operator:*

*(a) Is currently in default on an outstanding general obligation bond;*

*(b) Has an outstanding general obligation bonds that is rated lower than Baa by Moody's Investors Service, Inc. or BBB by Standard and Poor's ratings Services;*

*(c) Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past 2 fiscal years; or*

*(d) Receives an adverse opinion, a disclaimer of opinion or other qualified opinion from the audit performed by the independent certified public account or appropriate state agency pursuant to subsection 2, except that the solid waste management authority may allow a local government that is an owner or operator to demonstrate financial assurance if the authority determines that the qualified opinion is insufficient to warrant ineligibility.*

*4. As used in this section, unless the context otherwise requires:*

*(a) "Cash plus marketable securities" is equal to the cash plus marketable securities, excluding the cash and marketable securities designated to satisfy past obligations,, that are held by a local government on the last day of a fiscal year;*

*(b) "Debt service" is equal to the amount of principal and interest due on a loan in a*

*given time period;*

*(c) "Deficit" is equal to total annual revenue minus total annual expenditures if total annual expenditures are greater than total annual revenue;*

*(d) "Total annual revenue" includes revenue received by a local government during a fiscal year from taxes, fees and the management of funds on behalf of a third-party, but does not include proceeds from borrowing or the sale of an asset; and*

*(e) "Total annual expenditures" includes all expenditures of a local government during a fiscal year other than capital outlays and the repayment of debt.*

**Sec. 7. 1. Except as otherwise provided in subsection 5, to demonstrate financial assurance pursuant to section 5 of this regulation, a local government that is an owner or operator must disclose in its comprehensive annual financial report:**

*(a) The amount of the closure and postclosure costs which it will assure pursuant to section 5 of this regulation;*

*(b) The nature of the closure and postclosure requirements;*

*(c) Citations of the state or federal regulations which set forth the closure and postclosure requirements;*

*(d) The total liabilities reported on its most recent year-end balance sheet;*

*(e) Any remaining estimated closure and postclosure costs;*

*(f) The percentage of the landfill capacity that has been used; and*

*(g) The estimated remaining life of the landfill.*

**2) The information listed in subsection 1 must be placed in the comprehensive annual financial report of the local government that is an owner or operator:**

*(a) If the facility is not yet accepting waste, before the facility receives its initial shipment of waste.*

*(b) If the facility is currently accepting waste, before the local government that owns or operates the facility may demonstrate financial assurance pursuant to section 3 of this regulation.*

**3. Except as otherwise provided in subsection 4, a local government that is an owner or**

*operator shall, if applicable, place a reference to costs for corrective action in its comprehensive annual financial report not later than 120 days after it selects the corrective action remedy pursuant to NAC 444.7497, 444.7498 and 444.7499.*

*4. During the first year in which a local government that is an owner or operator demonstrates financial assurance pursuant to section 5 of this regulation, the local government shall place a reference to costs for corrective action in the operating record of its facility if its next comprehensive annual financial report will be released more than 120 days after the local government selects the corrective action remedy.*

*5. If a local government that is an owner or operator makes disclosures concerning closure and postclosure care and corrective action in conformity with Statement 18 of the Governmental Accounting Standards Board, the local government is not required to satisfy the disclosure requirements of subsection 1 to 4, inclusive.*

*Sec. 8. 1. To demonstrate financial assurance pursuant to section 5 of this regulation, a local government that is an owner or operator must include in the operating record of its facility:*

*(a) A letter which is signed by the chief financial officer of the local government that:*

*(1) Lists all of the estimates of costs of environmental obligations currently assured by the local government, including, without limitation, any obligation associated with:*

*(I) Underground injection control facilities pursuant to 40 C.F.R. Part 144;*

*(II) Hazardous waste treatment, storage and disposal facilities pursuant to 40 C.F.R. Parts 264 and 265;*

*(III) Underground storage tank facilities pursuant to 40 C.F.R. Part 280; or*

*(IV) Storage facilities for polychlorinated biphenyl pursuant to 40 C.F.R. Part 761;*

*(2) Certifies and provides evidence that the local government satisfies the requirement of section 6 of this regulation; and*

*(3) Certifies that the local government satisfies the requirements of sections 7 and 9 of this regulation;*

*(b) The financial statements of the local government for the most recently concluded*

*fiscal year, which must include, without limitation, an unqualified opinion of an auditor who is an independent certified public accountant or is from an appropriate state agency that conducts equivalent comprehensive audits;*

*(c) A report by an auditor who is an independent certified public accountant or is from an appropriate state agency that examines whether the local government satisfies the requirements of section 6 of this regulation; and*

*(d) A copy of the comprehensive annual financial report of the local government that was used to comply with section 7 of this regulation or certification that the requirements of Statement 18 of the Governmental Accounting Standards Board have been met.*

*2. The information required pursuant to subsection 1 must be:*

*(a) Place in the operating record of the facility:*

*(1) For closure and postclosure care:*

*(I) If the facility is not yet accepting waste, before the facility receives its initial shipment of waste.*

*(II) If the facility is currently accepting waste, before the local government that owns or operates the facility may demonstrate financial assurance pursuant to section 5 of this regulation.*

*(III) For corrective action, not later than 120 days after the local government selects the remedy for corrective action pursuant to NAC 444.7497, 444, 7498 and 444.7499.*

*(b) Updated not more than 180 days after the close of each fiscal year.*

*3. The local government may cancel financial assurance demonstrated pursuant to section 5 of this regulation only if the local government substitutes alternate financial assurance pursuant to NAC 444.68525 to 444.6859, inclusive, or section 11 or 16 of this regulation.*

*4. The solid waste management authority may require additional reports concerning the financial condition of a local government that is an owner or operator if the authority has reason to believe that the local government is not longer eligible to demonstrate financial assurance pursuant to section 5 of this regulation.*

*5. If the solid waste management authority finds that a local government that is an owner or operator is not longer eligible to demonstrate financial assurance pursuant to section 5 of this regulation, the local government must, upon notification by the solid waste management authority, provide alternate financial assurance pursuant to NAC 444.68525 to 444.6859, inclusive, or section 11 or 16 of this regulation.*

*Sec. 9. 1. To demonstrate financial assurance pursuant to section 5 of this regulation, a local government that is an owner or operator must demonstrate satisfaction of the requirements of sections 6, 7 and 8 of this regulation at the close of each fiscal year.*

*2. If the local government determines that it does not satisfy the requirements of sections 6, 7 and 8 of this regulation at the end of a fiscal year, the local government, not less than 120 days after the close of the fiscal year in which it failed to satisfy the requirements, must:*

*(a) Obtain alternate financial assurance pursuant to NAC 444.68525 to 444.6859, inclusive, or section 11 or 16 of this regulation;*

*(b) Place any required information concerning the alternate financial assurance in the operating record of its facility; and*

*(c) Notify the solid waste management authority that the local government is not eligible to demonstrate financial assurance pursuant to section 5 of this regulation and has obtained alternate financial assurance.*

*Sec. 10. The amount of any closure, postclosure and corrective action costs that a local government that is an owner or operator may assure pursuant to section 5 of this regulation will be determined as follows:*

*1. If the local government does not assure any other environmental obligation, the local government may assure closure, postclosure and corrective action costs that equal not more than 43 percent of the gross annual revenue of the local government.*

*2. If the local government assures any other environmental obligation, including, without limitation, any obligation associated with:*

*(a) Underground injection control facilities pursuant to 40 C.F.R. Part 144;*

*(b) Hazardous waste treatment, storage and disposal facilities pursuant to 40 C.F.R. Part 264 and 265;*

*(c) Underground storage tank facilities pursuant to 40 C.F.R. Part 280; or*

*(d) Storage facilities for polychlorinated biphenyl pursuant to 40 C.F.R. Part 761, the local government must add such costs to the closure, postclosure and corrective action costs it proposes to assure pursuant to this section. The total amount of total environmental obligations assurance may not exceed 43 percent of the gross annual revenue of the local government.*

*3. A local government that is an owner or operator must obtain alternate financial assurance pursuant to NAC 444.68525 to 444.6859, inclusive, or section 11 or 16 of this regulation for any closure, postclosure and corrective action costs that exceed the limits set forth in subsection 1 and 2.*

*Sec. 11. 1. An owner or operator may satisfy the requirements of NAC 444.6851 by obtaining a written guarantee from a local government. The local government must satisfy the requirement of sections 6 to 9, inclusive, of this regulation and of this section.*

*2. The guarantee must be effective:*

*(a) To guarantee closure or postclosure costs:*

*(1) If the facility is not yet accepting waste, before the facility receives its initial shipment of waste.*

*(2) If the facility is currently accepting waste, before the local government that owns or operates the facility may demonstrate financial assurance pursuant to section 3 of this regulation.*

*(b) To guarantee corrective action costs, not more than 120 days after the owner or operator selects the remedy of corrective action pursuant to NAC 444.7497, 444.7498 and 444.7499.*

*3. The guarantee must provide that:*

*(a) If the owner or operator fails to perform closure or postclosure care or corrective action for a facility that is covered by the guarantee, the guarantor will:*



*(1) Perform, or pay another qualified party to perform, any necessary closure or postclosure care or corrective action; or*

*(2) Establish a fully funded trust fund pursuant to NAC 444.6853 in the name of the owner or operator.*

*(b) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the solid waste management authority. Such cancellation will not take effect until 120 days after the owner or operator and the solid waste management authority have received notice of cancellation as evidenced by the return receipts.*

*(c) If a guarantee is canceled pursuant to paragraph (b), the owner or operator, not more than 90 days after receiving notice of the cancellation, must:*

*(1) Obtain alternate financial assurance pursuant to NAC 444.68525 to 444.6859, inclusive, or section 11 or 16 of this regulation;*

*(2) Place evidence of the alternate financial assurance in the operating record of its facility; and*

*(3) Notify the solid waste management authority that it has obtained alternate financial assurance and has placed evidence of it in the operating record of its facility.*

*4. An owner or operator shall, if it obtains a guarantee, place a certified copy of the guarantee and the items required pursuant to section 7 of this regulation in the operating record of the facility:*

*(a) For closure or postclosure care:*

*(1) If the facility is not yet accepting waste, before the facility receives its initial shipment of waste; or*

*(2) If the facility is currently accepting waste, before the local government that owns or operates the facility may demonstrate financial assurance pursuant to section 3 of this regulation;*

*(b) For corrective action costs, not more than 120 days the owner or operator selects the remedy for corrective action pursuant to NAC 444.7497, 444.7498 and 444.7499.*

***5. The owner or operator is not required to keep the items required in this section in the operating records of its facility if the owner or operator:***

***(1) Obtains alternate financial assurance pursuant to NAC 444.68525 to 444.6859, inclusive, or section 11 or 16 of this regulation; or***

***(2) Is not longer required to demonstrate financial assurance pursuant to NAC 444.6851, 444.68515 or 444.6852.***

***6. If a guarantor determines that it is no longer eligible to provide a guarantee pursuant to this section, the guarantor shall provide notice of such to the owner and operator being guaranteed.***

***7. The owner or operator, not later than 90 days after receiving notice that it is no longer guaranteed shall:***

***(a) Obtain alternate financial assurance pursuant to NAC 444.68525 to 444.6859, inclusive, or section 11 or 16 of this regulation;***

***(b) Place evidence of the alternate financial assurance in the operating record of its facility; and***

***(c) Notify the solid waste management authority that it has obtained alternate financial assurance and has placed evidence of it in the operating record of its facility.***

***Sec. 12. A corporate owner or operator may, if it satisfies the requirements of sections 13, 14 and 15 of this regulation, demonstrate financial assurance up to the amount set forth in paragraphs (b) and (c) of subsection 1 of section 13 of this regulation.***

***Sec. 13. 1. To demonstrate financial assurance pursuant to section 12 of this regulation, a corporate owner or operator:***

***(a) Must have:***

***(1) A current rating for its most recent bond issuance of Aaa, Aa, A or Baa from Moody's Investors Service, Inc. or AAA.Aa. A or BBB from Standard and Poor's Ratings Services;***

***(2) A ratio of total liabilities to net worth that is less than 1.5; or***

***(3) A ratio of net income plus depreciation, depletion and amortization to total***

*liabilities that is greater than 0.10.*

*(b) Must have a tangible net worth greater than the sum of any current estimates for closure, postclosure and corrective action plus any other obligation that the owner or operator financially assures plus \$10 million.*

*(c) Must have assets locate in the United States that amount to a sum which is not less than the sum of any current estimates for closure, postclosure and corrective action costs plus any other obligation that the owner or operator financially assures.*

*2. A corporate owner or operator must use a certified public accountant whenever it has its financial statement audited to be eligible to demonstrate financial assurance pursuant to section 12 of this regulation.*

*3. A corporate owner or operator is not eligible to demonstrate financial assurance pursuant to section 12 of this regulation if the owner or operator receives an adverse opinion, a disclaimer of opinion or any other qualified opinion from the audit performed by the independent certified public accountant pursuant to subsection 2, except that the solid waste management authority may allow the owner or operator to demonstrate financial assurance if the authority determines that the qualified opinion is insufficient to warrant ineligibility.*

*4. If the solid waste management authority determines pursuant to subsection 3 that a corporate owner or operator is not eligible to demonstrate financial assurance, the owner or operator must provide alternate financial assurance pursuant to NAC 444.68525 to 444.6859, inclusive, or section 11 or 16 of this regulation.*

*5. As used in this section:*

*(a) "Any other obligation that the owner or operator financially assures" includes, without limitation, financial assurance for:*

*(1) Underground injection control facilities pursuant to 40 C.F.R. Part 144;*

*(2) Hazardous waste treatment, storage and disposal facilities pursuant to 40 C.F.R. Parts 264 and 265;*

*(3) Underground storage tank facilities pursuant to 40 C.F.R. Part 280; or*

*(4) Storage facilities for polychlorinated biphenyl pursuant to 40 C.F.R. Part 761;*

*(b) "Assets" means all existing and probably future economic benefits obtained or controlled by the owner or operator.*

*(c) "Net income" means total annual revenue minus total annual expenses and any state and federal income taxes.*

*(d) "Net worth" means total assets minus total liabilities. The term includes intangible assets including, without limitation, goodwill and rights to patents or royalties.*

*(e) "Tangible net worth" means the tangible assets that remain after deducting liabilities. The term does not include intangible assets including, without limitation, goodwill or rights to patents or royalties.*

*(f) "Total liabilities" means the total probably future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.*

**Sec. 14. 1. To demonstrate financial assurance pursuant to section 10 of this regulation, a corporate owner of operator must include in the operating record of its facility:**

***(a) A letter which is signed by the chief financial officer of the owner or operator that:***

***(1) Lists any current estimates of costs that the owner or operator financially assures, including, without limitation, any cost estimates for:***

***(I) Underground injection control facilities pursuant to 40 C.F.R. Part 144;***

***(II) Hazardous waste treatment, storage and disposal facilities pursuant to 40 C.F.R. Parts 264 and 265;***

***(III) Underground storage tank facilities pursuant to 40 C.F.R. Part 280; or***

***(IV) Storage facilities for polychlorinated biphenyl pursuant to 40 C.F.R. Part 761.***

***(2) Provides evidence that the owner or operator satisfied the requirements of section 13 of this regulation.***

***(b) A copy of the unqualified opinion of the independent certified public accountant or a letter from the solid waste management authority that allows the owner or operator to demonstrate financial assurance pursuant to section 12 of this regulation despite having***

*received a qualified opinion from the accountant.*

*(c) If the financial data included in the letter described in paragraph (b) of this subsection are different than the data included the financial statements audited by the certified public accountant pursuant to section 13 of this regulation or are different than data included in any audited financial statement filed with the United States Securities and Exchange Commission, a special report from the independent certified public accountant stating that he has compared the data included in the letter with the data included in the other financial statements and does not have reason to believe that the data included in the letter should be adjusted.*

*2. The information required pursuant to subsection 1 must be:*

*(a) Placed in the operating record of the facility:*

*(1) For closure and postclosure care:*

*(I) If the facility is not yet accepting waste, before the facility receives its initial shipment of waste.*

*(II) If the facility is currently accepting waste, before the owner or operator may demonstrate financial assurance pursuant to section 3 of this regulation.*

*(2) For corrective action, not later than 120 days after the corporate owner or operator selects the remedy for corrective action pursuant to NAC 444.7497, 444.7498 and 444.7499.*

*(b) Updated not more than 90 days after the close of each fiscal year.*

*3. A corporate owner or operator is not required to meet the requirements of this section if the owner or operator:*

*(a) Obtains alternate financial assurance pursuant to NAC 444.68525 to 444.6859, inclusive, or section 11 or 16 of this regulation; or*

*(b) Is not longer required to demonstrate financial assurance pursuant to NAC 444.6851, 444.68515 or 444.6852.*

*4. The solid waste management authority may require a corporate owner of operator to provide current documentation to demonstrate financial assurance if the authority has reason*

*to believe that the owner or operator is no longer eligible to demonstrate financial assurance pursuant to section 12 of this regulation.*

*5. If the solid waste management authority finds that a corporate owner or operator is no longer eligible to demonstrate financial assurance pursuant to section 12 of this regulation, the owner or operator, upon receiving notice from the authority, must provide alternate financial assurance pursuant to NAC 444.68525 to 444.6859, inclusive, or section 11 or 16 of this regulation.*

*Sec. 15. 1. To demonstrate financial assurance pursuant to section 12 of this regulation, a corporate owner or operator must demonstrate satisfaction of the requirements of sections 13 and 14 of this regulation at the close of each fiscal year.*

*2. If the owner or operator does not satisfy the requirements of sections 13 and 14 of this regulation at the end of a fiscal year, the owner or operator, not less than 120 days after the close of the fiscal year in which it failed to satisfy the requirements, must:*

*(a) Obtain alternate financial assurance pursuant to NAC 444.68525 to 444.6859, inclusive, or section 11 or 16 of this regulation;*

*(b) Place any required information concerning the alternate financial assurance in the operating record of its facility; and*

*(c) Notify the solid waste management authority that the owner or operator is not eligible to demonstrate financial assurance pursuant to section 12 of this regulation and has obtained alternate financial assurance.*

*Sec. 16. 1. An owner or operator may satisfy the requirements of NAC 444.6851 by obtaining a written guarantee from a guarantor that satisfied the requirements of this section and sections 13, 14 and 15 of this regulation.*

*2. The guarantor must be the direct or higher tier parent corporation of the owner or operator, a firm whose direct or higher tier parent corporation is also the direct or higher tier parent corporation of the owner or operator, or a firm with a substantial business relationship with the owner or operator.*

*3. The owner or operator must place a certified copy of the guarantee in the operating*

*record of its facility.*

*4. If the direct or higher tier parent corporation of the guarantor is:*

*(a) The direct or higher tier parent corporation of the owner or operator, the chief financial officer of the guarantor must provide a letter that described the consideration the guarantor received in exchange for the guarantee.*

*(b) A firm with a substantial business relationship with the owner or operator, the chief financial officer of the guarantor must provide a letter describing the substantial business relationship and the consideration the guarantor received in exchange for the guarantee.*

*5. The guarantee must be effective and all required information must be placed in the operating record of the facility:*

*(a) For closure or postclosure care:*

*(1) If the facility is not yet accepting waste, before the facility receives its initial shipment of waste.*

*(2) If the facility is currently accepting waste, before the local government that owns or operates the facility may demonstrate financial assurance pursuant to section 3 of this regulation.*

*(b) For corrective action, not later than 120 days after the corporate owner or operator selects the remedy for corrective action pursuant to NAC 444.7497, 444.7498 and 444.7499.*

*6. The guarantee must provide that:*

*(a) If the owner or operator fails to perform closure or postclosure care or corrective action for a facility that is covered by the guarantee, the guarantor will:*

*(1) Perform, or pay another qualified party to perform, any necessary closure or postclosure care or corrective action; or*

*(2) Establish a fully funded trust fund pursuant to NAC 444.6853 in the name of the owner or operator.*

*(b) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the solid waste management*

*authority. Such cancellation will not take effect until 120 days after the owner or operator and the solid waste management authority have received notice of cancellation, as evidence by the return receipts.*

*(c) If a guarantee is canceled pursuant to paragraph (b), the owner or operator, not later than 90 days after receiving the notice of the cancellation must:*

*(a) Obtain alternate financial assurance pursuant to NAC 444.68525 to 444.6859, inclusive, or section 11 or 16 of this regulation;*

*(b) Place evidence of the alternate financial assurance in the operating record of the facility; and*

*(c) Notify the solid waste management authority that the owner or operator has obtained alternate financial assurance and has placed evidence of the alternate financial assurance in its operating record.*

*7. A corporate owner or operator is not required to keep the items required pursuant to this section in the operating record of its facility if the owner or operator:*

*(a) Obtains alternate financial assurance pursuant to NAC 444.68525 to 444.6859, inclusive, or section 11 or 16 of this regulation; or*

*(b) Is not longer required to demonstrate financial assurance pursuant to NAC 444.6851, 444.68515, or 444.6852.*

*8. If a guarantor determines that the corporate owner or operator is no longer eligible to demonstrate financial assurance, the guarantor shall, not later than 90 days after the close of the fiscal year in which the guarantor determined that the corporate owner or operator is not longer eligible, notify the solid waste management authority and place evidence of alternate financial assurance in the operating record of its facility.*

**Sec. 17.** NAC 444.685 is hereby amended to read as follows:

444.685 1. Except as otherwise provided in this section, the owner or operator of a Class I site or lateral expansion of a Class I site shall comply with the provisions of NAC 444.6851 to 444.6859, inclusive [.] , *and sections 2 to 16, inclusive, of this regulation.*

2. Owners or operators of Class I sites:



(a) Who are entities of the State of the Nevada or the Federal Government; and  
(b) Whose debts and liabilities are the debts and liabilities of the State of Nevada or the Federal Government, are exempt from the provisions of this section.

3. The solid waste management authority may approve an alternate plan for financial assurance if the alternate plan meets the criteria set forth in NAC 444.6859.

4. The solid waste management authority may waive compliance with the provisions of NAC 444.6851 to 444.6859, inclusive, ***and sections 2 to 16, inclusive, of this regulation,*** for a period not to extend beyond April 9, 1998, if an owner or operator demonstrates that:

(a) The date for compliance set forth in NAC 444.6851 to 444.6859, inclusive, ***and sections 2 to 16, inclusive, of this regulation,*** does not provide the owner or operator with sufficient time to comply with the provisions of those sections; and

(b) A waiver will not adversely affect human health and the environment.

**Sec. 18.** NAC 444.6851 is hereby amended to read as follows:

444.6851 1. The owner or operator shall obtain a detailed written estimate, in current dollars, of the cost of hiring a third person to close the largest area of all municipal solid waste landfill units within the site requiring a final cover as required by NAC 444.6891 at any time during the active life of the unit, in accordance with the plan for closure. The owner or operator shall notify the solid waste management authority that the estimate has been placed in the operating records of the disposal site.

2. The estimate must equal the cost of closing the largest area of all municipal solid waste landfill units within the site requiring a final cover at any time during the active life of the unit when the extent and manner of its operation would make closure the most expensive, as indicated by the plan for closure.

3. During the active life of the municipal solid waste landfill unit, the owner or operator shall annually adjust the estimate for inflation.

4. The owner or operator shall increase the estimate and amount of financial assurance if changes to the plan for closure or conditions at the municipal solid waste landfill unit increase

the maximum cost of closure at any time during the remaining active life of the unit.

5. The owner or operator may reduce the estimate and amount of financial assurance if the estimate exceeds the maximum cost of closure at any time during the remaining life of the municipal solid waste landfill unit. The owner or operator shall notify the solid waste management authority that the justification for the reduction has been placed in the operating records of the site.

6. The owner or operator of each municipal solid waste landfill unit shall establish financial assurance for closure of the municipal solid waste landfill unit in compliance with NAC 444.68525 to 444.6859, inclusive [.] , ***or sections 2 to 16, inclusive, of this regulation.*** The owner or operator shall provide continuous coverage for closure until released by the solid waste management authority from the requirements for financial assurance by demonstrating compliance with NAC 444.6893.

**Sec. 19. NAC 444.68525**

444.68525. The mechanisms used to demonstrate financial assurance pursuant to NAC 444.685 must ensure that the money necessary to meet the cost of closure, postclosure and corrective action for known releases of contaminants will be available whenever it is needed. The financial assurance may be in the form of:

1. A trust fund as described in NAC 444.6853;
2. A surety bond guaranteeing payment or performance as described in NAC 444.68535;
3. A letter of credit as described in NAC 444.6854;
4. A policy of insurance as described in NAC 444.6855;
5. ***A demonstration of financial assurance by a local government that is an owner or operator pursuant to section 5 of this regulation;***
6. ***A guarantee by a local government pursuant to section 11 of this regulation;***
7. ***A demonstration of financial assurance by a corporate owner or operator pursuant to section 12 of this regulation;***
8. ***A private guarantee pursuant to section 16 of this regulation;***

9. A mechanism approved by the solid waste management authority pursuant to NAC 444.6856;

[6.] 10. An assumption of responsibility by the state as described in NAC 444.6857; or

[7.] 11. Any combination of the options listed in subsections 1 to [6], 10, inclusive.

**Sec. 20.** NAC 444.6857 is hereby amended to read as follows:

444.6857 If this state assumes legal responsibility for an owner's or operator's compliance with the requirements for closure, postclosure or corrective action set forth in NAC 444.570 to 444.7499, inclusive, ***and sections 2 to 15, inclusive, of this regulation***, or assures that money will be available from the state to cover the related expenses, the owner or operator shall be deemed to be in compliance with the requirements of NAC 444.685. Any assumption of responsibility by this state must meet the criteria specified in NAC 444.6859.

**Sec. 21.** NAC 444.6858 is hereby amended to read as follows:

444.6858 1. Except as otherwise provided in subsection 2, an owner or operator may satisfy the requirements of NAC 444.685 by establishing more than one mechanism for financial assurance per municipal solid waste landfill unit as specified in NAC 444.6853 to 444.6857, inclusive [.], ***and section 2 to 15, inclusive, of this regulation***. The combination of mechanisms, rather than a single mechanism, must provide financial assurance for an amount at least equal to the current estimate of cost for closure, postclosure or corrective action, whichever is applicable.

2. Any financial assurance provided by:

(a) A corporate parent, if the entity holding the financial mechanism is a subsidiary of the corporate parent or a subsidiary of a subsidiary of the corporate parent; or

(b) Another subsidiary of the corporate parent, if the entity holding the financial mechanism is a subsidiary of the same corporate parent, may not be combined if the financial statements of the two entities are consolidated.

***3. Any financial assurance provided by establishing more than one financial mechanism per facility may not combine a mechanism that guarantees performance with a mechanism that guarantees payment.***

End of LCB R035-98

Petition 98002 was submitted to the State Environmental Commission on February 6, 1998. Petition 98002 was drafted into regulatory language by the Legislative Counsel Bureau as LCB File No. R035-98. LCB File No. R035-98 will come before the Environmental Commission for adoption as a permanent regulation on March 25, 1998.

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